BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Appeal No. 108 *of* 1904-05.

Appellant	*Versus*	Respondents
Venkatasubbaiya		1. Subbaiya 2. Chennappa.

Subject.

Appeal against the order of the Deputy Commissioner of the Tumkur District, confirming the sale held for arrears of revenue of lands Survey Nos. 49, 41 and 170 of Lakkenahalli village in the Gubbi Taluk.

The facts of the case are briefly these :—

Survey No. 49 (wet) measuring eight acres and thirty guntas and assessed at Rs. 40, of Lakkenahalli village, though included in the atchkat of Lakkenahalli tank is dependent for its irrigation on the Konanakallu tank. But the tank, breached and its bed was given out for temporary cultivation. Thus the only source of irrigation for Survey No. 49 failed and the appellant nevertheless offered to take it up for cultivation in the state in which it then was and he was accordingly put in possession of it in the year Plava (1901-02) and the kandayam therefor was also recovered from him. In the next year, he contended that he was not liable to pay the wet rate of assessment on the ground that there was no means of irrigating his land and prayed either for a remission of asesssment or for permission to utilize the water of the Lakkenahalli tank. But neither of these alternatives were allowed. Meanwhile the kandayam on this land for 1902-03 having fallen into arrears, a demand notice was duly served on the party. The appellant having failed to pay up the arrears, the lands in his khate including the number in question were, after the observance of all the prescribed formalities, put up to auction and at the sale held by the Amildar there were no bids forthcoming for Survey No. 49 which was bought in by Government, while the remaining numbers fetched small prices. When the records came up before the Deputy Commissioner, he, after personal inspection of the land, ordered the confirmation of the sale and also directed that as the petitioner had unauthorizedly taken Government tank water for cultivating his land (No. 49) which he had purchased in the condition in which it then was, he saw no reason to allow any remission and accordingly directed the recovery of the full assessment from the appellant. Hence the present appeal praying for the cancellation of the sale of Survey No. 49 and for the remission of half assessment on the said land.

Decision.

Though situated under a breached tank, the land in question was deliberately applied for and obtained by the appellant on the usual terms, that is, subject to the payment of full assessment. He paid full assessment accordingly for the first year. His default in the next year led to the adoption of the coercive measures of which he now complains. The Deputy Commissioner rightly held that the appellant had no valid grievance since the terms of the grant did not entitle him to any concession or relief and since moreover he had used the water of some other Government tank for the irrigation of his land. Government see no reason to interfere.

The appeal is rejected.

Memo No. R. 7500—***R. M.*** 476-04-8, *dated Bangalore,* 18*th December* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the records received with his letter No. 377, dated the 9th October 1905.

Appeal No. 109 *of* 1904-05.

Appellant—Kapinipati Nanjundaiya *alias* Srikantaiya, kayamguttadar of Ponnathpur, (represented by his agent L. C. Shama Rao).

Subject.

Appeal against the Inam Superintendent's order treating the village of Ponnathpur in the Alur Sub-Taluk, Hassan District, as a jodi village, and directing the imposition of excess quit-rent.

The facts of the case appear sufficiently from the following :—

Decision.

This is an appeal from an order of the Inam Superintendent treating the village of Ponnathpur as a jodi village, and directing the levy of an enhanced quit-rent on it.

2. On 8th August last, Government passed the following *ad interim* order remitting the case to the Inam Superintendent with certain observations, and calling for a further expression of his views:—

"This case relates to the annual payment due to Government from the holder of the village of Ponnathpur. The old kayamgutta was Rs. 805-6-1. At the Inam Settlement, it was raised by Rs. 40-4-4 which figure has now been further increased by Rs. 443-8-11, the village being dealt with as a jodi and not a kayamgutta village. Hence this appeal.

"The Inam enquiry disclosed the fact that the land was long being treated in the accounts and enjoyed as a kayamgutta village, and that Captain Chalmers, the Division Superintendent, was in error in referring to it as a jodi village in the concluding part of the order dated 29th January 1838.

"In his order dated 8th August 1876, the Chief Commissioner observed 'the list of kayamgutta grants received with the above has been compared with the accounts in the Chief Commissioner's office and found to be correct. The villages may be exempted from enquiry at the time of the Survey Settlement.' The list referred to include the village in question (Ponnathpur).

"Admittedly, Captain Chalmers could not, and did not, convert the tenure from kayamgutta to jodi and yet the Inam Commissioner in his Order dated 12th June 1879, observed as follows:—'The Brahmins resigned the kayamgutta tenure, and such tenure was apparently not continued by Captain Chalmers even if he had the power to do so, and he twice alludes to it in his orders as a jodi village. I am of opinion that this village should be struck off the list of kayamgutta villages.....'

"In a subsequent order dated 19th December 1879, recorded under the first one in the Inam Settlement Register, Colonel Cole said 'No. 1 in column 10 has attended. The confirmation on half quit-rent is to stand good, but as a kayamgutta village on the rules recently sanctioned.' The recent Rules he referred to were probably the Chief Commissioner's Order No. 1871-33—Rev. 331, dated the 8th August 1879, and paras 3 and 4 of his letter to the Government of India therein adverted to. It is however doubtful whether this village could be said to have come under the disability mentioned therein after it had been recognized and enjoyed as kayamgutta for a considerable period and after such tenure had been unequivocally admitted by the Chief Commissioner's order of 8th August 1876.

"The relinquishment by the bulk of the holders or rather the transfer by them to the only remaining holder whom the appellant represents, could not be taken to have altered or extinguished the tenure as will be seen from the papers produced by the appellant and also quoted in the Inam Settlement Register. Nor could Captain Chalmers' obvious misdescription have had any such effect. And yet Colonel Cole seems to have held that the kayamgutta tenure had ceased to exist by reason of the said transaction and misdescription.

"In the title-deed and the final Quit-rent Register, this village has been shown as kayamgutta and in the Inam Commissioner's endorsement dated 8th April 1880, the holder of the village has been called kayamguttadar.

"With reference to the Inam Superintendent's endorsement dated 1st November 1904, it may be observed that under the revised order of Colonel Cole, dated 19th December 1879, the village was settled as kayamgutta and not as jodi. In these circumstances, the case seems to require further elucidation. The above observations will accordingly be communicated to the Superintendent of Inams with a request that he will be good enough to favor Government with his opinion as to the soundness or otherwise of the appellant's contention that the amount fixed at the Inam Settlement is not liable to enhancement at the orders of Government, dated 17th February 1904. It is also a question whether the imposition of a small quit-rent at the Inam Settlement could be taken to have the effect of estopping the appellant from asserting that the tenure on which he holds the village is neither jodi nor doubtful kayamgutta, but undoubted and acknowledged kayamgutta."

3. The Inam Superintendent in his reply states as follows:—

"If Colonel Cole was wrong in holding that the kayamgutta tenure had ceased to exist, the imposition of the quit-rent at the Inam Settlement will have to be cancelled.

"Colonel Cole accepted the views of his Assistant as recorded in the register, but seems to have attached no weight to the Chief Commissioner's order of 8th August 1876. Documentary evidence regarding the village being conferred on kayamgutta is somewhat deficient, but the village had been treated and recognized as kayamgutta and, but for the interpretation incorrectly put upon Captain Chalmers' power to convert the tenure, would have been treated as such.

"I think the original Inam Settlement, including the imposition of quit-rent, may be set aside and the village recorded as kayamgutta."

4. It is clear that this has long been a kayamgutta village and that it should have treated as such at the Inam Settlement. The quit-rent first imposed on it was not objected to probably owing to its smallness. That quit-rent having been recently considerably raised, objection has now been taken to the manner in which the village has been dealt with by the Inam Department.

5. In concurrence with Colonel Grant, Government direct that the Inam Settlement including the imposition of quit-rent be set aside and the village recorded as kayamgutta.

Memo No. R. 7651—*R. M.* 535-04-8, *dated Bangalore, 22nd December* 1905.

Copy of the above is forwarded to the Superintendent of Inam Settlements in Mysore with reference to his letter No. 49, dated the 27th September 1905.

Appeal No. 37 *of* 1905-06.

Appellant	*Vs.*	*Respondent.*
Kare Bangaloora of Halu Bhavipalya, Magadi Taluk.		

Subject.

Appeal against the order of the Deputy Commissioner of the Bangalore District, directing the levy of an assessment of annas eight on the appellant for the year 1903-04, and his eviction from the subsequent year, from a vacant site No. 18 of Halu Bhavipalya village in the Magadi Taluk, alleged to be encroached upon by him but claimed as his private property.

The facts of the case appear sufficiently from the following:—

Decision.

These proceedings relate to a vacant building site which has been in the appellant's possession for some time past. In 1902, objection was, for the first time, taken to his enjoyment of it on the ground that he had no documentary evidence in proof of his title. The Assistant Commissioner ordered the usual site tax to be levied from him in addition to a fine of annas eight. The appellant was thereupon given a patta on the strength of which as well as of his antecedent title he continued to be in possession until the following year, when the Deputy Commissioner cancelled the patta and ordered the man's eviction. In appeal it is contended that this order is erroneous and unsustainable.

2. Government hold that the appeal is entitled to succeed. The appellant being in possession, it is for the party impugning his title to show that the site is not his property but that of Government. On this point there is absolutely no evidence. Under the law (Section 36 of the Revenue Regulation) what is not the property of individuals is the property of Government. This does not mean that the "*onus probandi*" lies on the individual actually in possession in assertion of his own right. It has not been shown that the site in question is not private property and that the appellant's possession is wrongful.

3. The appeal is allowed and the order directing the appellant's eviction set aside.

Memo No. R. 7695—*R. M.* 636-04-4, *dated Bangalore, 23rd December* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Bangalore District, together with the records received with his letter No. 250, dated the 11th September 1905.

Appeal No. 38 *of* 1905-06.

Appellant	*Vs.*	*Respondent*
J. Muniappa Setti of Kasba Mulbagal.		Venkatarayappa, Shanbhog of Kavitanahalli village, Mulbagal Taluk.

Subject.

Appeal against the order of the Deputy Commissioner of the Kolar District, affirming the order of the Assistant Commissioner, cancelling the alienation, by mortgage, of a portion of a certain service Inam land attached to the shanbhogi office of Kavitanahalli village in the Mulbagal Taluk, on the ground that such alienation was invalid as per rules; and directing that the mortgagee, who is the appellant, should be dispossessed of the said land.